

## MEMORANDUM OF LAW

DATE: December 28, 1994

TO: Gene Lathrop, Development Services Department

FROM: City Attorney

SUBJECT: White Trucks Sign Variance

This memorandum has been prepared to summarize our past discussions regarding the "White Trucks" sign located at 3860 Sherman Street (hereinafter referred to as the "Sign"). In summary, we concluded that the Planning Commission incorrectly approved a variance that allowed the Sign to remain in its current nonconforming condition. However, in spite of the Planning Commission's initial mistake in approving the variance, if the sign owner was to submit an application for an extension or amendment to such variance, the City would have to process the application. (Provided the application was submitted to the City in a timely manner.) Absent the City's approval of such extension or amendment, the Sign must be removed by November 16, 1994. Finally, the City should not process an application for a new variance. Our analysis is based on the following facts.

### I

#### BACKGROUND

In 1973, a City-wide ordinance was approved which required all non-conforming signs to be abated by February 6, 1984. The ordinance was amended in February, 1984 to allow non-conforming signs to remain until March 1, 1988 provided a conditional extension of time agreement was signed by the property owner. (San Diego Municipal Code Section 95.0123.F)

All references shall be to the San Diego Municipal Code unless otherwise stated.

Mr. Henry L. Wells leases property located at 3860 Sherman Street in the Midway Planned District. The Sign is located on his property and is used in conjunction with his trucking business. The Sign stands 98.6 feet high and is 1,130 square feet. It is not in conformance with the City's sign code regulations. Mr. Wells signed an agreement with the City to bring the Sign into conformance no later than March 1, 1988.

In June of 1989, Mr. Wells applied for a variance to retain the Sign in its non-conforming condition. After a public hearing, the

application was denied by Zoning Administrator Sharren Carr. She believed that Mr. Wells failed to establish any special circumstance that justified approval of the variance. (See Decision of the Zoning Administrator, No. C-20354.) An appeal from that decision was heard in November, 1989 by the Planning Commission. (Planning Commission Resolution No. 0635-PC.) The Planning Commission approved the variance but required the Sign to be removed by November 16, 1994.

## II

### ANALYSIS

After examining the relevant municipal code sections, we believe that an owner of a nonconforming sign cannot receive a variance from the City's sign code regulations. Our conclusion is based upon the rule of statutory construction that specific provisions control over more general provisions. *Diamond International Corp. v. Boas*, 92 Cal. App. 3d 1015 (1979). In addition, Section 11.0206 provides that when provisions of the Municipal Code are in conflict with each other, the more restrictive provisions shall apply.

The City Council had specifically declared that nonconforming signs are to be brought into conformity no later than May 1, 1988. Section 95.0110 states:

Signs in existence on April 5, 1973,  
which do not conform to the provisions  
of this Code . . . must be either removed  
or modified to conform to the provisions  
of this Code by May 15, 1984, or by  
May 1, 1988, if a conditional extension  
of time was granted.

Conversely, Section 101.0502(D) provides that the decisionmaker may approve a variance from the zoning provisions of the Municipal Code when a finding of special circumstances can be found. We can not infer that the general provision found in Section 101.0502 can be used to displace the clear intent to bring nonconforming signs into conformance. Consequently, Section 95.0110 with its definitive language must prevail over the more general phrasing of Section 101.0502. This means that a person cannot apply for a variance in order to maintain a nonconforming sign.

Therefore, it appears that the Planning Commission incorrectly approved the variance for the "White Trucks" Sign. However, the City never questioned the validity of the original variance, nor was this issue ever litigated. In addition, Mr. Wells may have incurred expenses related to the Sign in reliance on the originally approved variance. Therefore, we advised that the prudent course to follow would be to allow Mr. Wells to keep the Sign in its present location until November 16, 1994. In addition, Mr. Wells should be allowed to apply for an amendment or an extension to the variance prior to November 16, 1994.F

Although the variance did not provide an expiration date, we maintain that since Mr. Wells was required to remove the Sign by November 16, 1994, the permit expires on that date.

However, as of this date, Mr. Wells has not submitted an application requesting either an extension or an amendment to his original variance. Therefore, the City should request that the Sign be removed in accordance with the conditions of his variance. In addition, the City should not process an application for a subsequent variance. However, we suggest you contact our office should Mr. Wells submit an application for a new variance.

JOHN W. WITT, City Attorney

By

Ann Y. Moore

Deputy City Attorney

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